

Control Number: 43943



Item Number: 51

Addendum StartPage: 0

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Dismissing Without Prejudice the Petition of Bexar Metropolitan Water District to Compel Raw Water Commitment from Guadalupe-Blanco River Authority; TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005

On November 15, 2006, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the request of Bexar Metropolitan Water District (Petitioner) to withdraw without prejudice its previously filed petition to compel raw water commitment from Guadalupe-Blanco River Authority (GBRA). A Proposal for Decision (PFD) was presented by Mike Rogan, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public preliminary hearing concerning the petition on January 11, 2005, in Austin, Texas.

After considering the ALJ's Proposal for Decision, the Commission adopts the following Findings of Fact and Conclusions of Law:

## I. FINDINGS OF FACT

1. Bexar Metropolitan Water District (Petitioner) filed with the Commission a petition seeking to compel a commitment of raw water supply from Guadalupe-Blanco River Authority.
2. During a preliminary hearing on the petition, convened before SOAH on January 11, 2005, the following were designated as parties to the proceeding: the Petitioner (represented by Paul Terrill, Attorney), the Executive Director of TCEQ (represented by Todd Galiga, Staff

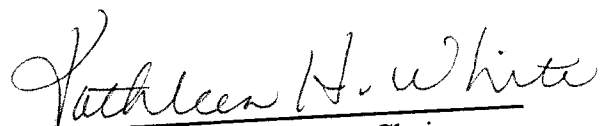
GBRA's response of June 6 also seems implicitly in agreement on that point. The ALJ therefore will rule on the issue of allowable expenses after reviewing the material submitted by June 20 [2006], unless a party promptly presents a convincing showing that some other procedure would be more appropriate.

8. On June 27, 2006, the ALJ issued an order concluding that GBRA's claim of \$903.89 for "computer legal research" should be encompassed within non-reimbursable attorney's fees, under 30 TAC § 80.25(e)(2), and that Petitioner accordingly would be entitled, under that rule, to obtain dismissal of its petition without prejudice upon reimbursing GBRA \$1,492.25 for expenses incurred in this action.
9. On July 5, 2006, the ALJ received a report stating that Petitioner had tendered to GBRA a check for \$1,492.25, which Petitioner asserted "covers all legitimate expenses Bexar Met is required to reimburse to obtain dismissal of this matter without prejudice pursuant to 30 TEX. ADMIN. CODE § 80.25(e)(2)."
10. No party has submitted any statement contradicting Petitioner's contention that it tendered the payment noted in the previous Finding of Fact.
11. At its November 15, 2006, agenda, the Commission concluded that GBRA's "computer legal research" expenses do not represent an element of attorney's fees. Therefore, the \$903.89 sought by GBRA for "computer legal research" is reimbursable under 30 TAC § 80.25(e)(2).
12. On November 14, 2006, Petitioner submitted documentation that it had reimbursed the \$903.89 GBRA sought for computer legal research expenses in this matter.

1. The request of Bexar Metropolitan Water District to withdraw its petition to compel raw water commitment from Guadalupe-Blanco River Authority is granted, without prejudice to refiling, and the matter is hereby dismissed upon that basis from the docket of the Texas Commission on Environmental Quality.
2. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.
4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to Petitioner.

ISSUED DATE: **NOV 29 2006**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

From:

R/22/2005/TUE 03:13 PM

Mar 22 2005 10:27

P. 001

LAW OFFICES OF  
**LOUIS T. ROSENBERG, P.C.**  
A PROFESSIONAL CORPORATION

**LOUIS T. ROSENBERG**  
**ROBERT L. WILSON, III**  
**CONNIE L. BASEL**  
Attorneys and Counselors at Law

De Mazieres Building  
322 Martinez Street  
San Antonio, Texas 78205  
Phone (210) 225-5454  
Fax (210) 225-5450

E-MAIL: [firm@ltrlaw.com](mailto:firm@ltrlaw.com)  
WEBSITE: [www.ltrlaw.com](http://www.ltrlaw.com)

**SONIA CANTU ROSENBERG**  
Office Manager/Paralegal

**SHELLI L. BAKER**  
Sr. Admin. Assist./Paralegal

March 22, 2005

LaDonna Castañuela, Esq. (MC-105)  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Via Fax: 512-239-3311  
Total Pages: 2

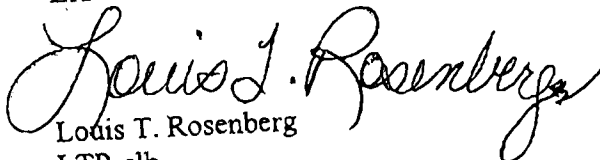
RE: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; *In re Petition of Bexar Metropolitan Water District to Compel Raw Water Commitment from Guadalupe-Blanco River Authority*

Dear Ms. Castañuela:

Please be advised that Shannon L. Strong is no longer associated with our firm. Please direct any correspondence, pleadings or filings in the above-referenced matter to Louis T. Rosenberg, Robert L. Wilson III, and/or Connie L. Basel at our firm's address.

Sincerely,

LAW OFFICES OF LOUIS T. ROSENBERG, P.C.

  
Louis T. Rosenberg  
LTR:slb

CHIEF OF STAFF  
MAR 22 2005

From:  
/22/2005/TUE 03:13 PM

Mar 22 2005

P 002

LaDonna Castañuela, Esq.  
March 22, 2005  
Page 2 of 2

cc: Mr. F. Gilbert Olivares, CFO/Comptroller & In-House Counsel  
Mr. Larry Bittle, Deputy General Manager  
Johnnie Terrazas, P.E., Deputy General Manager  
BexarMet

*Via Email*  
*Via Email*  
*Via Email*

David Blanke, Esq.  
Molly Cagle, Esq.  
Roger Nevola, Esq.

*Via Email*  
*Via Email*  
*Via Email*

Todd Galiga, Esq. (MC-173)  
Staff Attorney  
TCEQ

*Via Email*

Scott Humphrey, Esq. (MC-103)  
Office of the Public Interest Counsel  
TCEQ

*Via Email*

North O. West, Esq.  
Paul Terrill, Esq.  
Mark Zeppa, Esq.

*Via Email*  
*Via Email*  
*Via Email*

Robert L. Wilson, III, Esq.  
Connie L. Basel, Esq.

**HAZEN & TERRILL**  
A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701-2005  
Tel (512) 474-9100  
Fax (512) 474-9888

March 15, 2005

*Via Facsimile: (512) 475-4994*

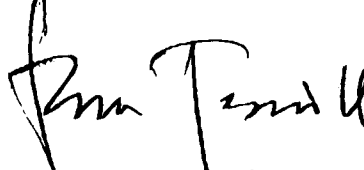
The Honorable Mike Rogan  
Administrative Law Judge  
State Office of Administrative Hearings  
William P. Clements Building, Jr.  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701

Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition  
of Bexar Metropolitan Water District to Compel Raw Water Commitment from  
Guadalupe-Blanco River Authority

Dear Judge Rogan:

Please be advised that Bexar Metropolitan Water District ("BexarMet") and the Guadalupe-Blanco River Authority ("GBRA") have reached the attached agreement concerning BexarMet's response to GBRA's Motion to Dismiss in the above-captioned matter. Pursuant to that Agreement, BexarMet will file its response to GBRA's Motion to Dismiss on or before April 1, 2005. BexarMet respectfully requests that you not rule on GBRA's Motion to Dismiss until BexarMet's response is filed on or before April 1, 2005 pursuant to the parties' agreement.

Sincerely,



Paul M. Terrill III  
HAZEN & TERRILL, P.C.

encl.

cc: Docket Clerk *Via fax to 239-3311*  
Todd Galiga *Via fax to 239-0606*  
Scott Humphrey *Via fax to 239-6377*  
Molly Cagle *Via fax to 236-3280*  
Roger Nevola *Via fax to 499-0575*

From: 5124749888

05/MAR/15/TUE 08:33 PM

HAZE [REDACTED] ILL

mar 15 2005  
FAX No 51247 [REDACTED]

P. 003/004

The Honorable Mike Rogan  
Administrative Law Judge  
March 15, 2005  
Page 2

bcc: Gil Olivares ([golivares@bexarmet.org](mailto:golivares@bexarmet.org))  
Melissa Wilson ([mwilson@bexarmet.org](mailto:mwilson@bexarmet.org))  
Louis T. Rosenberg ([finn@ltrlaw.com](mailto:finn@ltrlaw.com), [sb@ltrlaw.com](mailto:sb@ltrlaw.com))



From: 5124749888  
05/MAR/15/TUE 08:33 PM HAZE [REDACTED] RILL  
03/15/2005 18 14 FAX

mar 15 2005  
FAX No 51247 [REDACTED] 8

P. 004/004  
002/002

# HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701-2005  
Tel (512) 474-9100  
Fax (512) 474-9888

March 15, 2005

*Via Electronic Mail*

Ms. Molly Cagle  
Mr. David P. Blanko  
Vinson & Elkins L.L.P.  
The Terrace 7  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746

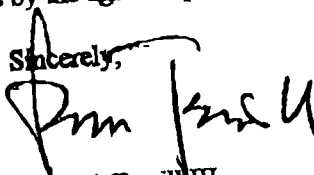
Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition  
of Bexar Metropolitan Water District to Compel Raw Water Commitment from  
Guadalupe-Blanco River Authority

Dear Molly and David:

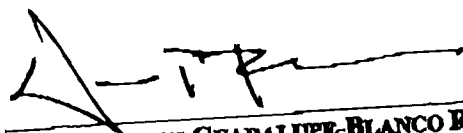
My purpose in writing is to confirm our agreement regarding Bexar Metropolitan Water District's ("BexarMet") response to the Guadalupe Blanco River Authority's ("GBRA") Motion to Dismiss in the above-captioned matter. Pursuant to that agreement, BexarMet will file its response to GBRA's Motion to Dismiss on or before Friday, April 1, 2005. If filed on or before that day, GBRA agrees to not object to the timeliness of BexarMet's response.

If this letter accurately reflects the parties' agreement, please sign in the space below and return this letter to my office by facsimile. I will then file the executed agreement with the Commission and the State Office of Administrative Hearings, and advise the ALJ to expect BexarMet's response to GBRA's Motion to Dismiss by the agreed-upon date.

Sincerely,

  
Paul M. Terrill III  
HAZEN & TERRILL, P.C.

AGREED:



ATTORNEY FOR GUADALUPE-BLANCO RIVER AUTHORITY

3/15/05  
DATE

cc: Roger Nevola Via fax to 499-0575

# HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
Tel (512) 474-9100  
Fax (512) 474-9888

## FAX COVER SHEET

DATE : March 15, 2005

TIME : 7:08pm

### PLEASE DELIVER TO:

NAME :	Mike Rogan, ALJ	FAX NUMBER :	475-4994
	Docket Clerk		239-3311
	Office of the Chief Clerk		
	Todd Galiga		239-0606
	Scott Humphrey		239-6377
	Molly Cagle		236-3280
	Roger Nevola		499-0575

FROM : Jackie Taylor, Paralegal

CM # 9234

TOTAL NUMBER OF PAGES SENT (Including coversheet) : 4 pages

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.

### REMARKS :

*TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition of Bexar Metropolitan Water District to Compel Raw Water Commitment from Guadalupe-Blanco River Authority*

See attached correspondence from Paul M. Terrill, III with attachment.

### CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

# Vinson&Elkins

David P. Blanke - dblank@velaw.com  
Tel 512.542.8622 Fax 512.236 3314

March 10, 2005

*By Courier*

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F, Room 1101  
P.O. Box 13087  
Austin, TX 78711-3087

Re: SOAH Docket No. 582-05-1005  
TCEQ Docket No. 2004-1384-UCR  
Petition of Bexar Metropolitan Water District to Compel Raw  
Water Commitment from Guadalupe-Blanco River Authority

Dear Ms. Castañuela:

Here is the Appendix to Guadalupe-Blanco River Authority's Motion to Dismiss, which we ask be filed among the papers in this proceeding. The appendix contains a number of materials cited in the motion to dismiss that was filed yesterday.

Very truly yours,



David P. Blanke

Enclosures

cc: Judge Mike Rogan (*By Courier*)  
Brenda Bishop, SOAH Docket Clerk (*By Courier*)  
Service List (*By Courier*)

# Vinson & Elkins

David P. Blanke dblank@velaw.com  
Tel 512.542.8622 Fax 512.236.3314

March 10, 2005

*By Courier*

Mr. Mike Rogan  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15th Street, Suite 502B  
Austin, Texas 78701

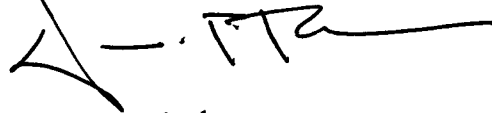
Re: SOAH Docket No. 582-05-1005  
TCEQ Docket No. 2004-1384-UCR  
Petition of Bexar Metropolitan Water District to Compel Raw Water  
Commitment from Guadalupe-Blanco River Authority

Dear Judge Rogan:

Yesterday Guadalupe-Blanco River Authority ("**GBRA**") filed its Motion to Dismiss in the above referenced matter. Attached hereto, to assist in your review of GBRA's Motion, are various versions of Senate Bill 1494, unpublished opinions, and other documents referred to in this Motion.

Thank you for your time and attention to this matter.

Very truly yours,



David P. Blanke

Enclosure

cc: LaDonna Castañuela (*By Courier*) ✓  
Service List (*By Courier*)

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Martin A. Hubert, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 30, 2006

TO: Persons on the attached mailing list.

RE: Bexar Metropolitan Water District  
TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005

### **Decision of the Commission on Petition**

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to dismiss without prejudice the petition filed concerning the above-referenced matter. Enclosed with this letter is a copy of the Commission's order. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

### **Deadline for Filing Motion for Rehearing.**

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this matter. A person is presumed to have been notified on the third day after the date that this order is mailed.

An original and 11 copies of the motion must be sent to the chief clerk at the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

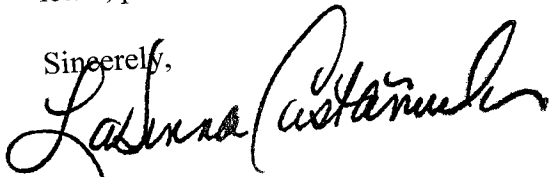
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion was sent to those on the mailing list must also be sent to the chief clerk.

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this matter.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela". The signature is fluid and cursive, with the first name "LaDonna" written in a larger, more prominent script than the last name "Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/cz

Enclosure

MAILING LIST  
Bexar Metropolitan Water District  
TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005

FOR THE PETITIONER:

Paul M. Terrill, III  
Howard S. Slobodin  
Jackie Taylor  
Hazen & Terrill, P.C.  
810 West 10<sup>th</sup> Street  
Austin, Texas 78701-2005

INTERESTED PERSONS:

Molly Cagle  
David P. Blanke  
Bryan J. Moore  
Vinson & Elkins, L.L.P.  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746-7568

Roger Nevola  
Law Office of Roger Nevola  
P.O. Box 2103  
Austin, Texas 78767-2103

Guadalupe-Blanco River Authority  
Attention General Manager  
933 East Court Street  
Seguin, Texas 78155

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Brian Dickey, Technical Staff  
Elsie Pascua, Financial Staff  
Texas Commission on Environmental Quality  
Water Supply Division MC-153  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jodena Henneke, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

\* The Honorable Mike Rogan,  
Administrative Law Judge  
State Office of Administrative Hearings  
P. O. Box 13025  
Austin, Texas 78711-3025

\* Courtesy Copy